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मामला क्रमांक M.C.C. 289 सन् 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPLICANTS	1. M/s Ganesh Shankar Pandey, Daharamshala Bazar, Gorakhpur-273001 (U.P.) Through it's Power of Attorney Holder-Shri Ram Awatar Agrawal, Aged about 53 years, R/o Link Road, Bilaspur-495001 (Chhattisgarh) 2. M/s Ram Awatar Agrawal, Power of Attorney Holder-Shri Ram Awatar Agrawal, S/o Satya Pal Agrawal, Aged about 53 years, R/o. Link Road, Bilaspur-495001 (Chhattisgarh)
		VERSUS
	RESPONDENT :	1. The Chairman Cum managing Director, South Ea Coalfield Limited, Seepat Road, PO: SECL, Bilaspur (C.G.) 2. The General Manager (Civil) South Eastern Coalfield Limited, Seepat Road, PO: SECL, Bilaspur (C.G.)
	Present: Mr. Anand K. Tiwari, counsel for the applicant. Dr. N.K.Shukla, Sr. Advocate with Mr. Dilip Dubey, counsel for the respondents.	
	27.4.2007 The applicants have preferred this application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for brevity 'the Act of 1996) for appointment of sole arbitrator with the averment	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

that the applicants and the non-applicants entered into an agreement dated 9th November 1998 for the work of widening, strengthening & black topping of Bilaspur Seepat-Baloda Road. The work order was issued on 3.8.1998 and time allowed for completion of the work was 24 months commencing from 2.8.1998 and it was to expire on 2.8.2000. After entering into the contract agreement, the applicants appointed Ram Awatar Agrawal as its Sub-contractor and gave intimation to this effect to the respondents and obtained their approval vide Annexure A/6 dated 9.6.2000. The work was completed on 31.12.2001 and it was acknowledged by document of Annexure A/7 and accordingly, a certificate of Annexure A/8 was issued by the respondents. However, there was inordinate delay in preparation of the final bill on the part of respondents and because of delay in preparation of revised estimate, the applicants served notice dated 1.4.2003 calling upon the respondents to arrange for final payment within 15 days, vide Annexure A/9. There was a dispute between the parties regarding imposition of penalty, claims towards escalation etc. and finally the applicants vide their letter dated 6.4.2005 (Annexure A/13) raised their claim amounting to Rs.255 lacs.

The above claim was not replied by the respondents. Thereafter, the matter was taken up before the Chairman-cum-Managing Director for release of due payment i.e. Rs.255 lacs or else a request for appointment of sole arbitrator as per the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

provisions of Civil Engineering Manual, within 30 days of the receipt of this letter, to adjudicate the matter was made, vide letter dated 10.5.2005 of Annexure A/14.

It is stated by the applicants that in case of any ambiguity, the Civil Engineering Manual shall be referred to and the provisions in the Civil Engineering Manual shall prevail upon. Clause 14 of the Civil Engineering Manual contains arbitration clause, which reads as under:

> *"14.2 Except where otherwise provided for in the contract all questions and disputes relating to meaning of the specification, designs, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, design drawings, specification, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during commencement/the progress of the work or after the completion or abandonment thereof shall be referred to, on failure of settlement of disputes by the company and on request of the contractor as per clause 14.1 of*

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the contract, the sole arbitration of the person appointed by the Chairman-cum-Managing Director of the company or any other person authorized by him, to appoint such arbitrator."

Since the respondents have failed to appoint an arbitrator even after receipt of notice of Annexure A/14 after a period of 30 days, the instant application has been filed for appointment of arbitrator.

Dr. N.K. Shukla, learned counsel for the respondents does not dispute execution of the agreement and also admits that a dispute has arisen between the parties out of the agreement which contains arbitration clause. He submits that he has no objection if a sole arbitrator is appointed for adjudication of the disputes.

Since the respondents have failed to appoint an arbitrator despite being called upon for the same by the applicants, a case for appointment of arbitrator is held to be made out.

In view of above, I, hereby, therefore, appoint Hon'ble Mr. S.K. Tiwari, Retired Judge of High Court of Kolkata, presently residing at 27 Kholi, Vikas Nagar, Bilaspur (C.G.) as sole arbitrator, subject to his consent.

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	The learned arbitrator may settle his terms and conditions and remuneration. Registry to intimate Hon'ble Mr. S.K. Tiwari, Retired Judge of High Court of Kolkata, about his appointment as arbitrator and to send all the papers along with address of the parties. Parties are also directed to approach Hon'ble Mr. S.K. Tiwari, who is presently residing at 27 Kholi, Vikas Nagar, Bilaspur (C.G.) and to submit papers and to take part in the arbitration proceedings. **Sd/-** **Dhirendra Mishra** **Judge**	